

DEC 19 1919

JAMES D. MAKER,
CLERK

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1919

No. ~~124~~209

YEE WON,

Petitioner,

vs.

EDWARD WHITE, as Commissioner of
Immigration, Port of San Francisco,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

NOTICE OF PRESENTATION OF PETITION
FOR WRIT OF CERTIORARI.

To be Addressed to the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit.

M. WALTON HENDRY,

JOSEPH P. FALLON,

Hearst Building, San Francisco,

Attorneys for Petitioner.



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*To the Honorable Edward Douglass White, Chief
Justice, and the Associate Justices of the
Supreme Court of the United States.*

Your petitioner respectfully shows:

The family of your petitioner consisting of wife
and two minor children arrived at the port of San
Francisco, California, on the SS. "Tjisondari" July

16, 1917. They applied for admission to the United States as the wife and minor children of your petitioner, who is a regularly domiciled Chinese merchant and a member of the exempt class. Admission was denied by the Commissioner of Immigration on the ground that your petitioner had not established satisfactorily his status as a merchant. An appeal was taken therefrom to the Secretary of Labor and the excluding decision of the Commissioner was sustained. Your petitioner thereupon filed a petition in the District Court for a writ of habeas corpus. The petition was dismissed by the court, which rendered the following opinion:

"The record discloses here the fact that Yee Won is the husband of Chin Shee and the father of the minor children, Yee Tuk Oy and Yee Yuk Hing, who seek admission into this country as the wife and children of a domiciled merchant.

The record also shows that Yee Won is a man of means whose right to remain here is not apparently questioned. The immigration authorities found upon evidence that would seem to warrant the finding, that he has been engaged in driving a laundry wagon quite recently. This finding deprives him of the mercantile status to which he lays claim.

It is not absolutely certain, however, that, as he himself is entitled to remain, his wife and children may not be admitted as the wife and children of one rightfully in this country who is entitled to the companionship of the wife and care and comfort of the children.

The question has never to my knowledge, been so decided, and as it is a matter of grave moment, I think if such rule be laid down it

should be laid down by a higher tribunal. The wife and children have been admitted on bonds pending this hearing, and this presents a fair case through which to have the question suggested definitely determined."

An appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit and the opinion of the lower court was sustained. The Circuit Court of Appeals in its opinion does not touch on the point of law raised by the decision of the District Court, to wit, whether or not a Chinese person entitled to remain in this country by virtue of our treaty with China, although held by the Immigration officials to have lost his status as a merchant, is entitled to have his wife and minor children admitted. Your petitioner respectfully submits that a denial of such a right is a violation of our treaty with China. By the treaty between China and the United States, dated November 27, 1880, it is agreed that:

"Whenever in the opinion of the government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country, or of any locality within the territory thereof, the government of China agrees that the government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese

laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse." Article I.

And:

"Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation." Article II.

This treaty has been construed innumerable times both by the Supreme Court of the United States and by other federal tribunals to permit a merchant to bring into this country his wife and children. The same reasoning by which this privilege (we may call it right) has been extended to the wife and children of a Chinese merchant is equally applicable to the wife and children of a Chinese laborer who is entitled under Article II of the treaty to remain in the United States and to go and come of his own free will and accord.

The right to the comfort and companionship of one's family is a natural one and was recognized by several of the judges in the federal courts prior to the famous case of *United States v. Gue Lim*, 20 S. Ct. 415; 176 U. S. 459.

In re Tung Yeong, 19 Fed. 184, Judge Hoffman said:

"It was not without satisfaction that I found there was no requirement of the law which would oblige me to deny to a parent the custody of his child and to send the latter back across the ocean to the country from which he came."

Judge Deady in one of the earliest cases construing the treaty in conjunction with the Chinese Exclusion Acts said, in the case of *In re Chung Toy Ho*, 42 Fed. 398:

"It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children; particularly when it is remembered that such concession is accompanied with a declaration to the effect that, in such entry and sojourn in the country, he shall be entitled to all the rights and privileges of a subject of Great Britain or a citizen of France."

In *United States v. Gue Lim*, *supra*, all the cases in which the question had theretofore arisen were before the Supreme Court of the United States and it rendered its decision in accordance with that of Judge Deady in the *Chung Toy Ho* case.

A careful examination of the treaty will show that the same rule must be followed in the case of Chinese laborers who were then in the United States, as in the case of teachers, students or tourists. They are all classed together and the treaty provides that all "shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation". This would entitle all of the classes mentioned in the treaty to all of these rights, privileges, immunities and exemptions as long as the same rights, privileges, immunities and exemptions were enjoyed by the citizens and subjects of other nations.

These persons have a certain status and it has been held that that status continues with them as far as their right to remain in the country is concerned, notwithstanding that through choice or necessity they are forced to change their occupation. Such was the decision of the District Court in *United States v. Fong Hong*, 233 Fed. 168. In that case a Chinese merchant entered the country under a Section 6 certificate and subsequently became a laborer. It was held that this did not affect his right to remain in the United States. Had he subsequently to his laboring sought to bring his wife and children into the country can it be seriously contended that they would not have been entitled to land? They would have been the family of a person lawfully entitled to remain in the United States; his domicile would have been their

domicile, and his natural right to their company, their care and their custody would be none the less a fact by reason of his change of occupation.

The treaty of 1880 accords your petitioner certain rights, privileges, immunities and exemptions, and that treaty is the supreme law of the land. Those rights, privileges, immunities and exemptions can not be abridged by reason of the means by which your petitioner seeks his livelihood while a resident in the United States. Among those rights, privileges, immunities and exemptions are the rights to the keep and companionship of his wife and the care and custody of his children, and by the common law his domicile is their domicile.

Wherefore, because of the gravity and importance of the question involved, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them, and each of them, to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the records and proceedings of the said Circuit Court of Appeals in the said case lately pending therein, entitled "Yee Won, Appellant, vs. Edward White, as Commissioner of Immigration, Port of San Francisco, Appellee, No. 3259", to the end that the decision and judgment of said Circuit Court of Appeals may be reviewed, as provided in Section 240 of the Act of Congress approved March 3, 1911, and that

your petitioner may have such other and further relief or remedy in the premises, as to this court may seem appropriate and in conformity with said Act, and that the decisions and the judgments of the said Circuit Court of Appeals and of the Southern Division of the United States District Court for the Northern District of California, First Division, in the said case, and every part thereof may be reversed by this Honorable Court.

And your petitioner now presents, as an exhibit to his petition, a certified copy of the entire transcript of record of the case, including the proceedings in the United States Circuit Court of Appeals for the Ninth Circuit, to which court he prays the writ of certiorari may be directed.

And your petitioner will ever pray.

M. WALTON HENDRY,

JOSEPH P. FALLON,

Attorneys for Petitioner.

Wm E. Harvey,
Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for petitioner and that in my opinion the foregoing and annexed petition for a writ of certiorari is well founded as to matters of fact and as to questions of law, and is not interposed for delay.

M. WALTON HENDRY,

Of Counsel for Petitioner.

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To A. Mitchell Palmer, Attorney General of the
United States, and Assistant Attorney General
of the United States, Washington, D. C.

Sirs:

You, and each of you, will please take notice that
the petitioner above named, through his counsel,
will present, to the above named court, on the.....

day of January, 1920, at the hour of twelve o'clock noon of said day, or as soon thereafter as his counsel can be heard, at the courtroom thereof in the Capitol Building, in the City of Washington, District of Columbia, a petition for a writ of certiorari.

Said petition will be based upon this notice, the accompanying petition for a writ of certiorari and all of the papers and records on file.

Yours, etc.,

M. WALTON HENDRY,

JOSEPH P. FALLON,

Attorneys for Petitioner.

Receipt of a copy of the foregoing petition for writ of certiorari and notice of presentation of petition for writ of certiorari is hereby admitted this _____ day of January, 1920.

Attorney General of the United States,

Assistant Attorney General of the United States,

Attorneys for Respondent.

